IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

CRP.No. 701 of 2006()

AGAINST THE ORDER DATED 08/03/2006 IN EP. 381 /2004 IN OS.357/2003 of MUNSIFF COURT, CHITTUR

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REVN. PETITIONER: PETITIONER/DECREE HOLDER:

THANKAPRAKASH,
S/O.KANAKASABHAPATHI UDAYAR,
AGED 54 YEARS, ALIYAMPADAM,
POLPULY VILLAGE, PALAKKAD TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.BINOY VASUDEVAN

RESPONDENT: RESPONDENT:JUDGEMENT DEBTOR:

RAMANAN,
S/O.KITTU, AGED 40 YEARS,
DEVANGAPURAM, CHITTUR VILLAGE,
CHITTUR TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

M.N.KRISHNAN, J

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C.R.P. No.701 OF 2006

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Dated this the 5th day of September 2007

O R D E R

This revision petition is preferred against the order of the Munsiff's Court, Chittur in E.P.No.381 of 2004 in O.S.No.357 of 2003. The decree holder has moved the execution petition for reasliation of Rs.38,962/- with interest. According to the decree holder, the judgment debtor is having tailoring business and he is earning Rs.10,000/- per month. It is also stated that he is having sound financial capacity. PW1 is the decree holder and he had deposed that the judgment debtor is having tailoring business and he is earning Rs.10,000/- per month from it. The judgment debtor did not mount the box. It is stated that the judgment debtor is having no income and he is living at the mercy of his wife and relatives. The trump card of the decree holder is of the recharging of the mobile phone for the period from 30th August, 2004 to 5th August, 2005. If really the recharging of mobile is done to that extent, one has to say that all is not well with the judgment debtor regarding the plea of his no means. If a person is running a tailoring shop, certainly he is assessed to profession tax and there will be further

documents to show that he is a member of the association. The Civil Procedure Code also contemplates an affidavit of particulars under Order XXI Rule 41(3) which will pin down the judgment debtor at least regarding his assets. The non-mounting of box by the judgment debtor also may have to be looked into. In these type of cases, the preponderance of probabilities may have to be looked into and evidence analysed in that aspect. So, in order to enable the decree holder to prove the means of the judgment debtor I am inclined to give him one opportunity especially in the back drop of Ext.X2.

Therefore, the order under challenge is set aside the matter is remitted back to the executing court for fresh consideration after affording opportunity to the decree holder to produce both documentary and oral evidence in support of his contentions. Needless to say that the judgment debtor also will be at liberty to adduce further evidence and produce documents in support of his contentions or against the evidence tendered by the decree holder. Parties are directed to appear before the court below on 22.10.2007.

C.R.P. is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-